IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Civil Miscellaneous Appeal No.1029 of 1999

National Insurance Co.Ltd.,
Branch Office,
Mettur Dam, R.S. 638 400. ... Appellant/2nd Respondent

vs.

1.Saroja
2.T.Raja
3.M.R.Krishnan ...
Respondents/Petitioners1,2/R1

Appeal against the order and decree dated 19.3.1999 made in M.C.O.P.No.685 of 1995 on the file of the Motor Accident Claims Tribunal (Sub Court), Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.V.Lakshminarayanan for R1&R2

J U D G M E N T

The above appeal is directed against the award dated 19.3.1999 made in M.C.O.P.No.685 of 1995 on the file of the Motor Accident Claims Tribunal (Sub Court), Krishnagiri.

2. The claimants are respondents 1 and 2 herein. In the accident that took place on 5.6.1995, one Vairavan, son of the claimants, suffered injuries while he was travelling as pillion rider on a motorcycle which collided with a lorry identity of which was not known. The victim was taking treatment and died subsequently in the hospital. The claimants claimed Rs.2,00,000/- as compensation against the owner of the vehicle, 3rd respondent herein and the insurer, appellant herein. The Tribunal awarded a sum of Rs.1,29,600/- against which the present appeal has been filed.

3. The learned counsel for the appellants argued that in the case of pillion rider being victim, the risk is neither required to be covered under section 147 of the Motor Vehicles

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Act, nor covered under the Insurance Policy and hence, the order of the Tribunal fastening the liability on the appellant Insurance Corporation is not correct.

4. On the other hand, learned counsel appearing for the claimant supported the findings as well as conclusion of the Tribunal.

5. Concededly, the son of claimants, by name, Vairavan, who was the pillion rider, died due to the injuries sustained in the accident involving the motorcycle owned by the 3rd respondent herein which hit against an unknown lorry. It is not in dispute that the motorcycle was insured with the appellant Corporation under Ex.R-1 Insurance Policy which is claimed to be 'Act policy'.

6. The core issue that is to be decided here is whether a statutory insurance policy under the Motor Vehicles Act, 1988, which is an Act Policy would cover the risk of death or injury to a pillion rider? In the instant case, the Assistant Administrative Officer of the appellant Corporation was examined as R.W.1, who, in his evidence, has stated that the insurance policy Ex.R-1 would not cover pillion rider and the policy would only cover the risks as per the provisions of the Motor Vehicles Act, 1988. On the perusal of the insurance policy, the Tribunal recorded a finding that the policy is an Act only Policy.

7. The Apex Court, while deciding a similar issue in united India Insurance Co. Ltd. v. Tilak Singh (2006 ACJ 1441), held that the insurance company owed no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy and hence, it did not cover the risk of death of or bodily injury to gratuitous passenger.

8. Applying the ratio of the decision of the Apex Court in Tilak Singh case, cited supra, I am of the view that the insurance company is not liable to pay compensation to the claimants as there is no risk covered for the death of pillion rider in the insurance policy.

9. Though the Tribunal held that the 3rd respondent/owner was driving the vehicle at the time of accident, taking the deceased Vairavan as pillion rider when the accident took place and hence, the insurance company is liable to pay compensation under third party liability. However, on the facts of the case, it is seen from the claim petition itself that one Raja was driving the vehicle at the time of accident and not the 3rd respondent herein. Further, the decision of the Apex Court in Tilak Singh case, cited supra, would squarely apply to the facts of the case wherein it is categorically held that when the insurance policy

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is a statutory policy, it would not cover the risk of death or injury to a pillion rider. In this view of the matter, I am of the view that the Tribunal is not correct in directing the Insurance company to pay compensation to the claimants, and accordingly, the appellant Insurance company is exonerated.

It is brought to my notice that the appellant Insurance Company had deposited the entire award amount and the claimants withdrew 50% thereof. The claimants, respondents 1 and 2 herein are, therefore, entitled to the amount as awarded by the Tribunal, less the amount already withdrawn by them, from the owner of the vehicle, 3rd respondent herein. The appellant Insurance Company is permitted to withdraw the remaining amount lying in the deposit and also to proceed against the owner of the vehicle, 3rd respondent herein to realise the amount already withdrawn by the claimants. The appeal is ordered accordingly. However, in the circumstances, there will be no order as to costs.
na.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge
Motor Accident Claims Tribunal Krishnagiri.

2.The Record Keeper
V.R. Section High Court Madras.

+ one cc to Mr. N . Vijayaraghavan, Advocate sr no. 14803

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